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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/666,928	09/21/2000	Jay Kin Keung	10188	6748

23455 7590 01/21/2004

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EXAMINER

VO, HAI

ART UNIT PAPER NUMBER

1771

DATE MAILED: 01/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/666,928		KEUNG ET AL.	
	Examiner		Art Unit	
	Hai Vo		1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9, 10 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) 9 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input checked="" type="checkbox"/> Other: <u>the graph</u> . |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 13,14, 16-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keller et al (US 5,691,043 in view of Crighton et al (US 6,235,143) as evidenced by Kong et al (US 6,503,635) substantially as set forth in the Office Action mailed on 07/28/2003. Ms. Marie-France Nothnagle is one of the inventors named in US Patent no. 5,691,043 to Keller et al. Ms. Marie-France Nothnagle's declaration filed on 07/28/2003 makes it clear that the ethylene-propylene-butylene **terpolymer** available from Chisso under the tradename Chisso 7800 or 7700 series is different from the **copolymer** described at column 8, lines 10-12. Accordingly, the examiner agrees that the ethylene-propylene-butylene terpolymer available from Chisso would not have a melting point in the range of 115°C to 130°C as stated in the Office Action mailed on 07/28/2003. However, the art rejections have been maintained for the following reasons. Attached to the declaration of Robert Migliorini filed on 10/28/2003 is a graph showing Crimp Seal MST vs. DSC Peak Melting Temperature for various ethylene-propylene-butylene terpolymers which are used in the skin layer of the present invention. The graph shows that a resin with a melting temperature of 122.5°C has a crimp seal MST of about 201°F and that a resin with a melting temperature of 126°C has a crimp seal

MST of about 209°F. The examiner disagrees. It is noticed that none of the points plotted falls within the line. There is a significantly large deviation of the plotted points with respect to the line. The consideration of the graph raises a substantial new question of linear relationship of the melting temperature and the crimp seal MST. Accordingly, the statement that a resin with a melting temperature of 122.5°C has a crimp seal MST of about 201°F and that a resin with a melting temperature of 126°C has a crimp seal MST of about 209°F is not found persuasive in view of the graph. Further, the examiner found that the points A and B in the graph having a melting temperature closed to 122.5°C and 126°C respectively correspond to a crimp seal MST of about 221°F and 222°F respectively (see the attached graph). Finally, Applicants argue that Keller neither teaches nor suggests the use of a Chisso terpolymer in a skin layer. The arguments are not found persuasive. It appears that the ethylene-propylene-butylene terpolymer used in the skin layer and the Chisso terpolymer used in the core layer of Keller have similar amounts of ethylene and butylene (column 7, lines 9-11 and column 8, lines 1-4). It is the examiner's position that the ethylene-propylene-butylene terpolymer used in the skin layer would have inherently possessed the melting point closed to the Chisso terpolymer. This is in line with In re Spada, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties.

3. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keller et al (US 5,691,043) in view of Crighton et al (US 6,235,143) as evidenced by Kong et al

(US 6,503,635), as applied to claim 1, further in view of Shreck (US 5,681,208) substantially as set forth in the Office Action mailed on 07/28/2003. The same reasons set forth in the paragraph no. 2 are believed to be pertinent.

4. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keller et al (US 5,691,043) in view of Crighton et al (US 6,235,143) and Shreck (US 5,681,208) as evidenced by Kong et al (US 6,503,635), as applied to claim 17, further in view of Falla et al (US 5,674,944) substantially as set forth in the Office Action mailed on 07/28/2003. The same reasons set forth in the paragraph no. 2 are believed to be pertinent.
5. The 112 claim rejections have been overcome by the present amendment.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (571) 272-1485. The examiner can normally be reached on M,T,Th, F, 7:00-4:30 and on alternating Wednesdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0994.

HV


TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700